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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Mark Stuart,

Plaintiff,

V.

City of Scottsdale, et al.,

Defendants.

Case No.CV-21-01917-PHX-DJH -JZB

JOINT CASE MANAGEMENT REPORT

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure and this Court's order (Doc. 38), the parties submit the following the Joint Case Management Report:

1. **List of Parties in the Case.** The denominated plaintiffs are Mark Stuart and Virginia Stuart and the defendants are the City of Scottsdale, Officer Jason Glenn, Officer Tom Cleary, Officer Sage Randall, Bruce Washburn and Jane Doe Washburn, and Mayor Jim Lane and Joanne Lane, Jim Thompson and Kristen Thompson, City Attorney Sherry Scott, Luis Santaella, Council members Kathy Littlefield, Solange Whitehead, Linda Milhaven, David Ortega, Tami Caputi, Betty Janik, and Tom Durham.

2. Short Statement of the Nature of the Case.

DEFENDANTS POSITION:

1 Plaintiffs have failed to comply with this Court’s Order (Doc. 35). They have failed
 2 and refused to eliminate claims that have been previously adjudicated; and they have failed
 3 and refused to eliminate claims that are duplicative of claims already asserted. Plaintiffs’
 4 violation of this Court’s Order should lead to the striking or dismissal of Plaintiffs’ Complaint.
 5 Furthermore, this Court has already determined that certain Defendants are entitled to qualified
 6 immunity. (*Stuart II* Doc. 119 at 11). Plaintiffs should not be permitted to challenge that
 7 conclusion in this litigation.

8 Plaintiffs’ insistence that “facts matter” is meaningless in light of their *assertion of the*
 9 *same facts* here that were already asserted in the *Stuart II* litigation. Indeed, the complaint was
 10 amended in *Stuart II* to assert a host of allegations for violations of 42 U.S.C. § 1983 identical
 11 to those Plaintiffs have attempted to frame in this case:

- 12 • “In February 2017, Washburn, Lane and Scottsdale caused Mark Stuart to be
 arrested and prohibited him from speaking at open public comment in a city
 council meeting about unconstitutional speech practices utilized by Scottsdale.”
 [*Stuart II* Doc. 93, ¶ 132.]
- 13 • “Arresting Stuart and prohibiting him from speaking is an example of the
 implementation of Scottsdale’s equal protection and due process violation
 policies.” [*Id.* ¶ 133.]
- 14 • “[T]here was more than four hours of testimony about the role of the Mayor and
 city attorney Bruce Washburn in Stuart’s arrest.” [*Id.* ¶ 134.]
- 15 • “Washburn . . . [is an] official policy makers for Scottsdale” [*Id.* ¶ 149.]
- 16 • “The actions by [Washburn and Lane] named in this Count prevented the Stuarts
 from speaking freely and publishing freely, discouraged the Stuarts from
 speaking freely and publishing freely, and sought to punish the Stuarts for
 speaking freely and publishing freely.” [*Id.* ¶ 179.]

26

- 1 • “In April 2018, Defendants LANE, WASHBURN . . . AND SCOTTSDALE
 2 were informed that Mark Stuart was being treated for depression and anxiety
 3 because of Scottsdale actions harassing him while he was peacefully exercising
 4 his First Amendment rights in Scottsdale.” [Id. ¶ 208.]

5 In August 2021, Judge Teilborg granted summary judgment as to a number of claims in
 6 *Stuart II*, concluding that all the individual defendants—including former Mayor Lane, and
 7 former City Attorney Bruce Washburn—were entitled to qualified immunity. [*Stuart II* Doc.
 8 119 at 11.]

9 On March 9, 2022, Judge Teilborg granted summary judgment as to all remaining
 10 claims in *Stuart II*, including a *Monell* claim against the City, finding that “Plaintiffs have
 11 failed to show Defendants caused a constitutional deprivation.” [*Stuart II* Doc. 151 at 5.]
 12 Further, Judge Teilborg concluded that, even if Mr. Stuart could establish a constitutional
 13 violation (and he did not), he had “failed to show that Scottsdale had a custom, pattern,
 14 practice, or policy of violating constitutional rights.” [Id. at 8.] Critically, Judge Teilborg also
 15 expressly found that Mr. Washburn was *not* a final policy maker for the City of Scottsdale. [Id.
 16 at 8–9.] Judge Teilborg entered judgment against Mr. Stuart, which he appealed. On August 2,
 17 2023, the Ninth Circuit affirmed the judgment in *Stuart II* in all respects. That judgment is
 18 binding on Plaintiffs and cannot be challenged in this litigation.

19 **PLAINTIFF'S POSITION :**

20
 21 Defendants position is a surreply to their motion to strike, doc. 41 This Court should
 22 disregard it in its entirety.

23 Plaintiffs are pursuing seven claims. There is no valid factual basis for defendants
 24 claims that plaintiffs are pursuing claims that have already been adjudicated. Robust discovery
 25 will show that Scott, Lane, Thompson and Washburn are/were the finalpolicymakers
 26 regarding prosecutions in Scottsdale, and that the City acted to pursue these prosecutions, i.e.,

1 directly participated in them. Who is the final policy maker regarding police practices for
 2 returning property? Discovery will reveal this.

3 Defendants do not understand that the date a claim accrues matters for pleading. A
 4 plaintiff has to replead the facts giving rise to the new claim, after it accrues. Otherwise the
 5 plaintiff loses his right to pursue this claim. “A claim for malicious prosecution does not
 6 accrue until the prior proceedings have terminated in the accused's favor, including any
 7 pending appeal that could lead to further proceedings.” *Donahoe v. Arpaio*, 986 F. Supp. 2d
 8 1091, 1108 (D. Ariz. 2013) “If the harm arose from different facts at a different time, however,
 9 then the plaintiff could not have brought the claim in the first action. *Howard v. City of COOS*
 10 *Bay*, 871 F. 3d 1032, 1039 (2017) “claim preclusion does not apply to claims that accrue after
 11 the filing of the operative complaint.”

12 **Count II** involves two distinct claims for malicious prosecution. Plaintiffs allege and
 13 will prove that defendants Lane, Washburn, Santaella , Cleary, Randall and Glenn set in
 14 motion in a series of events that caused Mark Stuart to be prosecuted for trespassing , when
 15 these defendaans knew there was no probable cause to believe that Mark Stuart was trespassing
 16 under A.R.S. 13-1503(A) Plainitffs will prove that these defendants learned about Feb. 21,
 17 2017, that there was no probable cause to believe that Mark Stuart was trespassing, and that
 18 despite this knowledge , these defendants continued to advocate for Mark Stuart’s prosecution
 19 for trespassing. The evidence will show that none of the defendants had any evidence that
 20 showed that Mark Stuart knowingly entered the open call to the public (public comment) at the
 21 Scottsdale city council meeting on Feb. 7, 2017 unlawfully, or that Mark Stuart knowingly
 22 remained unlawfully at the open call to the public (public comment) The evidence will show
 23 that defendants caused Mark Stuart to be prosecuted for trespassing to retaliate on him for
 24 peacefully exercising his free speech rights, to discourage him from engaging in free speech in
 25 the future, to deny him the equal protection of the law, and to curtail his liberty interests
 26 through criminal process.

1 Plaintiffs will prove that defendants Scottsdale, Lane , Santaella, and Scott caused
 2 Mark Stuart to be prosecuted for making threats under A.R.S. 13-1201(A)(1), when they knew
 3 there was not probable cause to believe that he had made a true threat as defined by controlling
 4 law, and that they knew there was no chance of success under controlling law. The evidence
 5 will show that defendants caused Mark Stuart to be prosecuted for making threats to retaliate
 6 on him for engaging in prior protected free speech, and to impair his ability to present a
 7 defense in the trespassing prosecution.

8 Plaintiffs allege and will prove that the city of Scottsdale, Lane, Washburn, Santaella,
 9 Scott, Randall, Cleary and Glenn, (collectively "Scottsdale") and possibly, others created and
 10 pursued an official policy of retaliation and reprisal for Stuart's prior protected speech, which
 11 was executed, in part, by prosecuting Stuart for allegedly trespassing and allegedly making
 12 threats.

13 **Count I** alleges violation of equal protection and due process, related to the trespassing
 14 and threats prosecution. The evidence will show that Scottsdale , as part of an official policy of
 15 retaliation, denied Mark Stuart exculpatory evidence in the trespassing prosecution. The
 16 evidence will show that Scott, Lane, Santaella, and Scottsdale caused Mark Stuart to be
 17 selectively prosecuted for allegedly making threats, becasue of his identity and political
 18 beliefs. The evidence will show that Scott, Lane and Scottsdale prosecuted Mark Stuart for
 19 threats, despite knowing that the prosecutor had a disqualifying conflict of interest.

20 **Count III** is an unreasonable continued seizure of the Stuarts' guns and ammunition,
 21 which violated the Stuarts clearly established Fourth Amendment rights. The evidence will
 22 show that because of the implementation of an official written policy and customary
 23 practices, Scottsdale , Santaella, Scott and Thompson unreasonably interfered with the
 24 Stuarts possessory interests in their property for almost ninety days, in direct contravention of
 25 Ninth Circuit precedent such as *Miranda v. city of Cornelius*, 429 F.3d 858 (9th Cir. 2005)
 26 and *Brewster v. Beck*, 859 F.3d 1194 (9th Cir. 2017).

1 **Count IV** is a Monell Claim against the City, based on direct participation, ratification,
 2 and adoption of de facto unconstitutional policies, written and unwritten, failure to train by
 3 the City and some of its final policymakers in Count I to III.

4 **Count V** is a First Amendment retaliation , burdening , suppressing and chilling claim ,
 5 based on the threats prosecution, an unconstitutional , undefined jurisdictional speech
 6 requirement for the open call to the public (public comment), which chilled and suppressed
 7 Mark Stuart's free speech rights in October and November 2021.

8 **Count VI** is a state law malicious prosecution claim for the threats prosecution, against
 9 Scottsdale, Scott and Lane.

10 **Counts VII and VIII** ask this Court to invalidate A.R.S. 13-1202(A)(1) for vagueness
 11 and overbreadth in violation of the First and Fourteenth Amendments.

12 Discovery will show that Scottsdale adopted an official policy of prosecuting Mark
 13 Stuart in retaliation for his prior protected free speech, and for other unconstitutional reasons.

14 Facts matter. Judge Teilborg did not rule that the Scottsdale city attorney is never a
 15 final policymaker for any decision. Judge Teilborg's ruling is limited to the facts presented in
 16 that case, which are distinctly different than the facts of this case. Judge Teilborg did not rule
 17 that the Mayor or city manager is never a final policymaker for any decision.

18 3. **Jurisdictional Basis for the Case.** Plaintiffs have brought this case pursuant to
 19 42 U.S.C. § 1983. 28 U.S.C. § 1367(a) provides the basis for the state law claim. 28 U.S.C. §§
 20 2201 and 2202 and Rule 57 and 65 of the Federal Rules of Civil Procedure is the basis for
 21 counts VII and VIII. Defendants assert that the Court should refuse to exercise jurisdiction
 22 over previously adjudicated and/or duplicative claims. Furthermore, Plaintiffs' assertion that
 23 Rules 57 and 65 of the Federal Rules of Civil Procedure provide a substantive basis for
 24 cognizable claims is fundamentally incorrect.

25 4. **Parties Which Have Not Been Served.**

26 **PLAINTIFF'S POSITION:**

1 All parties have been served

2 **DEFENDANTS' POSITION:**

3 Plaintiffs' assertion that “[a]ll parties have been served” is nonsensical. Should the
4 Court refuse to enforce its Order (Doc. 35) and permit Plaintiffs newly added claims
5 challenging the constitutionality of Arizona statutes remain, then the State is a necessary and
6 indispensable party. *See Fed. R. Civ. P. 5.1* (requiring the Court to “certify to” the Arizona
7 Attorney General that an Arizona statute has been challenged, and giving the Arizona Attorney
8 General at least 60 days to intervene). The State has not been “served”—it has not even been
9 named as a party by Plaintiffs.

10 5. **Amendment of Pleadings.**

11 **PLAINTIFF'S POSITION:**

12 Plaintiff plans to seek to amend the complaint to conform to the evidence at trial,
13 which will very likely lead to the addition of other parties, and will almost certainly add
14 additional claims.

15 **DEFENDANTS' POSITION:** The Court's Order (Doc. 35) could not have been more
16 clear in its prohibition against the addition of any “any new claims or parties.” (Doc. 35 at 8).
17 Yet, Plaintiffs flouted the Court's Order and have admittedly added “new claims” which will
18 necessitate the addition of new “parties.” Indeed, as noted above, because Plaintiffs’
19 impermissible First Amended Complaint attempts to challenge the constitutionality of a *state*
20 statute, the State of Arizona would be a necessary and indispensable party should the Court
21 permit Plaintiffs to violate this Court’s Order. In any event, pursuant to controlling authority,
22 Plaintiffs must amend their operative pleading within any deadlines set by this Court. *Johnson*
23 *v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608 (9th Cir. 1992).

24

25 6. **List of Contemplated Motions in a Statement of the Issues to be Decided by**
26 **These Motions.**

1 **DEFENDANTS' POSITION:**

2 Pursuant to long-standing Supreme Court authority, this Court should decide whether
 3 the individual defendants are entitled to qualified immunity at the earliest possible stage of the
 4 litigation. *Anderson v. Creighton*, 483 U.S. 635, 646 (1987) (“For this reason, we have
 5 emphasized that qualified immunity questions should be resolved at the earliest possible stage
 6 of a litigation.”). To be sure, more than 40 years ago, the Supreme Court established the
 7 following paradigm: “the *Harlow* Court refashioned the qualified immunity doctrine in such a
 8 way as to ‘permit the resolution of many insubstantial claims on summary judgment’ and to
 9 avoid ‘subject[ing] government officials either to the costs of trial or to the burdens of broad-
 10 reaching discovery’ in cases where the legal norms the officials are alleged to have violated
 11 were not clearly established at the time.”” *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)
 12 (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 815 (1982)). Here, this Court has already
 13 determined that many of the defendants are entitled to qualified immunity. (*Stuart II* Doc. 119
 14 at 11). Further, as noted above, Plaintiffs have failed to comply with the Court’s Order and
 15 their extant Complaint should be stricken. The Court should hold any discovery in abeyance
 16 until after the Court determines what claims or defendants, if any, remain in this matter.

17 In any event, only after the Court determines what claims remain extant, if any, can
 18 Defendants be expected to properly frame a dispositive Rule 12 motion. Should any claims
 19 survive dismissal, then Defendants will seek summary judgment.

20

21 **PLAINTIFF'S POSITION:**

22 There is no qualified immunity for any of the claims in this case. Retaliatory prosecutions,
 23 such as alleged here, have long been clearly established as a violation of the First and Fourth
 24 amendments. Defendants have no chance of success on issue or claim preclusion. By way of
 25 example, Defendants have successfully argued that they did not need to prove a true threat to
 26

1 receive a civil injunction against workplace harassment against Mark Stuart under ARS 12-1810,
2 based on Mark Stuart's conversations with psychiatric personnel in May and Nov. of 2019. In
3 the injunction proceedings, Mr. Johnson, Scottsdale' attorney, argued repeatedly that,
4 ".....the Court is to review the evidence and determine that an objectively reasonable person
5 would've felt threatened by the defendant's behavior." Scottsdale argued that context and intent
6 did not matter. The Superior Court granted them relief—the injunction against workplace
7 harassment—based on these arguments. Scottsdale is judicially estopped from changing its
8 arguments and positions now. See *Harbor Breeze Corp. v. Newport Landing Sportfishing, Inc.*,
9 28 F.4th 35, 40 (9th Cir. 2022) See also Manolian v. Lytle, No. CV-20-00365-PHX-DJH (D.
10 Ariz. Mar. 7, 2022) ("Judicial estoppel . . . precludes a party from gaining an advantage by
11 taking one position, and then seeking a second advantage by taking an incompatible position,"
12 either in the same action or in different actions.")
13

14 Plaintiffs will be lodging a motion for partial summary judgment based on Counts II, III, IV,
15 V and VI within in the next ninety days.

16 Plaintiffs believe that defendants will impede discovery by improperly asserting attorney
17 client privilege, legislative privilege, and deliberative process privilege. Plaintiffs anticipate that
18 many discovery disputes will need to be resolved by this Court.
19

20 Discovery is needed to prove direct or indirect participation, ratification , failure to train,
21 and who knew what and when. Discovery is needed to prove that there was no probable cause
22 to believe that Stuart was doing anything unlawful. Discovery is needed to establish Scottsdale's
23

24

25

26

1 unconstitutional motives.¹ Discovery is needed to prove differential treatment of similarly
2 situated individuals in the threats and trespassing prosecutions. .

3 Plaintiff will be serving defendants with RFAs, RFPs and Interrogatories as soon as this
4 Court allows it. Defendants will have thirty days to respond. Plaintiff anticipates lack of
5 cooperation from defendants in discovery, based on defendants past discovery conduct in other
6 cases. Plaintiff anticipates that he will be forced to file several motions to compel.
7

8. **Consent to a Magistrate Judge.** The parties do not consent to the assignment
9 of this action to a Magistrate Judge.

10. **Status of Related Cases.** Discovery is underway in CV-17-01848-DJH(JZB).
11 There are a number of outstanding discovery disputes, and two depositions that need to be
12 completed; Cleary , Scottsdale 30(b)(6)

13 DEFENDANTS' POSITION: As noted in this Court's Order (Doc. 35), the claims
14 framed by Plaintiffs' First Amended Complaint are duplicative of claims that: a) have already
15 been dismissed with prejudice and may not be reasserted; or b) are already pending in the 2017
16 Litigation.

17. **Exchange of Rule 26(a) Initial Disclosures.**

18 **DEFENDANTS' POSITION:**

19 Defendants propose that the Court hold the exchange of disclosure statements in
20 abeyance until after the Court determines if any claims or defendants remain.

21 **PLAINTIFF'S POSITION:**

22 Plaintiff asks that initial disclosure statements be due on or before **Oct. 15, 2023.**

23. **Issues Related to Disclosure or Discovery of ESI.** The parties are currently
24 unaware of any issues relating to the disclosure or discovery of electronically stored
25

26¹ Scottsdale = the city of Scottsdale, Lane, Washburn, Santaella, Cleary , Randall, Scott,
Thompson, and Glenn.

1 information. The parties will discuss ESI issues within two weeks after the scheduling
2 conference.

3 **11. Issues Relating to Privilege.** The parties are currently unaware of any issues
4 relating to privilege. See comment above

5 **12. Necessary Discovery.**

6 **DEFENDANT'S POSITION:**

7 As noted above, Plaintiffs have failed to comply with this Court's Order (Doc. 35); the
8 Court has determined that individual defendants are entitled to qualified immunity; and the
9 Court has dismissed *Monell* claims against the City. No discovery should be permitted unless
10 and until the Court determines whether any claims or defendants remain in this matter. In any
11 event, this Court should limit discovery and decide issues of qualified immunity prior to
12 subjecting the individuals who may be entitled to qualified immunity to the burdens of
13 litigation. *Crawford-El*, 523 U.S. at 600 (“[T]he judge should give priority to discovery
14 concerning issues that bear upon the qualified immunity defense, such as the actions that the
15 official actually took, since that defense should be resolved as early as possible.”); *Anderson v.*
16 *Creighton*, 483 U.S. at 646 n. 6 (“One of the purposes of the *Harlow* qualified immunity
17 standard is to protect public officials from the ‘broad-ranging discovery’ that can be
18 “peculiarly disruptive of effective government.”). For this reason, the Supreme Court has
19 repeatedly emphasized that qualified immunity questions should be resolved at the earliest
20 possible stage of a litigation. *Harlow*, 457 US at 818; *Mitchell*, 472 U.S. at 526(1985).

21 Accordingly, the Court should initially limit any discovery only to issues related to the
22 assertion of qualified immunity. If the Court declines to extend qualified immunity to one or
23 more of the individual defendants, then the following discovery on the merits will be
24 necessary.

25 **PLAINTIFF'S POSITION:**

26

1 Plaintiff has fully complied with this Court's order, as explained in plaintiff's response
 2 to defendants motion to strike. (doc. 42)

3 Discovery is necessary to establish Scottsdale, Lane, Scott , Santaella and Washburn's
 4 participation in Stuart's prosecutions, to provide evidence of an official policy of retaliation for
 5 Stuart's speech prior to his arrest on Feb. 7, 2017, and afterward. See *Lozman v. Riviera
 Beach*, 138 S. Ct. 1945, 1954 (2018) Discovery is necessary about Lane, Washburn, Scott,
 6 Thompson, Santaella, and Scottsdale's knowledge of Stuart's free speech activities in
 7 Scottsdale and related to Scottsdale from Oct. 1, 2016 through March 31, 2018. This discovery
 8 helps to prove an official policy of retaliation for prior speech.

9
 10 Discovery is necessary to establish that Mark Stuart is the only person the Scottsdale
 11 prosecutor has charged with making threats under ARS 13-1202(A)(1) in the past twenty
 12 years, because of confidential conversations with a psychiatric nurse who was evaluating him
 13 for treatment. Others have done what Mark Stuart did, seek psychiatric help, and have not been
 14 prosecuted.

15 Discovery is necessary about Scott, Thompson and Santaella's roles and involvement in
 16 the City's refusal to return the Stuarts guns and ammunition to them, how the policy described
 17 by the police in July 2021 is customarily implemented, and what training the city provided
 18 Scottsdale police about the Fourth Amendment after *Brewster v Beck*, 859 F.3d 1194 (9th Cir.
 19 2017).

20 Discovery is necessary about the City Council's non-public discussions about Mark
 21 Stuart and his prosecution for trespassing , the SOP Initiative and the rules of public comment
 22 , from Feb. 8, 2017 , through Dec. 31, 2018. Discovery is necessary about the City Council
 23 members discussions and decisions related to Mark Stuart's prosecution for threats in 2019,
 24 their advocacy for this prosecution, and Lane , Scott and Santaella's role in causing this
 25 prosecution to happen. Discovery is necessary about the historical practices at open public
 26 comment and citizen petitioning time in Scottsdale city council meetings, from Feb. 8, 2017

1 through Dec. 31, 2018. (citizen petition time and open public comment are collectively "open
2 public comment") Discovery is needed about Lane, Washburn, Santaella, Cleary and Glenn's
3 training about First Amendment rights in city council meetings. Discovery is necessary about
4 all the actions and communications between Lane, Washburn, Santaella, Cleary and Glenn
5 about Mark Stuart, or the SOP Initiative , thirty days prior to Stuart's arrest, through Jan. 20,
6 2020.-Discovery is necessary about Lane Scott, Thompson and Washburn's status as official
7 policymakers for Scottsdale. Discovery is necessary about Lane and Scottsdale's attitudes and
8 opposition to the SOP Initiative, from Dec. 1, 2016 to Nov. 30, 2018 . Discovery will show
9 that Scottsdale's opposition included the entire City Council.

10 As this Court can see, there is a need for wide ranging discovery to prove the existence
11 of an official policy of retaliation for Stuart's prior protected speech.
12

13 **a. Nature, Extent, and Location of Discovery Anticipated by the Parties.**

14 **DEFENDANTS' POSITION:**

15 Defendants incorporate by reference their position set forth in sections 2, 6 and 12,
16 above.

17 **PLAINTIFF'S POSITION:**

18 Plaintiff will be serving defendants with RFAs, RFPs, and Interrogatories, as soon as this
19 Court allows discovery to proceed. All discoverable information is in defendants possession.
20 Defendants Lane and Washburn , used their personal emails and cell phones to communicate
21 about Scottsdale business, including about Mark Stuart and the SOP Initiative. It will be
22 necessary to gain texts and emails from their cell phones, as well as their personal emails.
23 Plaintiff believes that Scottsdale has destroyed a lot of evidence that he could use to support
24 his claim. It may be necessary to have a data systems expert search Scottsdale's systems to
25 confirm the destruction of this evidence.

1 **b. The Scope of Discovery or whether discovery should be
2 conducted in Phases.**

3 **DEFENDANTS' POSITION:**

4 Defendants' incorporate by reference their position set forth in sections 2, 6 and 12,
5 above. Moreover, the Court should not permit any discovery in excess of the presumptive
6 limits.

7 **PLAINTIFF'S POSITION:**

8 There should be no limitations on discovery, other than those defined in FRCP 26(b).
9 Plaintiff would like to serve defendants Lane, Washburn, Scott, Santaella, Thompson and
10 Scottsdale with twenty-five interrogatories per defendant in two steps. The first set would be
11 fifteen interrogatories. The second set of ten interrogatories would allow plaintiff to obtain
12 clarification of any issues, and collect evidence of evasive , obfuscatory conduct, which would
13 be presented to a jury to attack defendants credibility.
14

15 c. **Discovery Limitations.** The parties incorporate by reference their
16 position set forth above.

17 **DEFENDANTS' POSITION:** Defendants incorporate by reference their
18 positions set forth in Sections 2, 6 and 12, above. Moreover, because Mr. Stuart has previously
19 threatened to kill certain Defendants, violently attack other Defendants, and blow up City
20 property, Defendants request that any deposition discovery take place in a secure facility that
21 will require Plaintiffs to pass through metal detectors to enter such facility.

22 **PLAINTIFF'S POSITION:**

23 There should be no limitations on discovery, other than those defined in FRCP 26(b).

24 d. **Hours Permitted for Each Deposition.**

25 **DEFENDANTS' POSITION:**

1 Should any discovery proceed in this case, consistent with limiting discovery to be
2 “proportional to the needs of the case,” the Court should limit any deposition to four (4) hours,
3 and should not permit any deponent to be required to sit for more than one (1) deposition
4 absent a showing of cause. Moreover, because Mr. Stuart has previously threatened to kill
5 certain Defendants, violently attack other Defendants, and blow up City property, Defendants
6 request that any deposition discovery take place in a secure facility that will require Plaintiffs
7 to pass through metal detectors to enter such facility.

8 **PLAINTIFF'S POSITION:**

9 Plaintiff requests that the length of depositions be seven (7) hours per FRCP 30(d).
10 Plaintiff also requests that the Court allow him to split time for depositions for Lane, Washburn,
11 , Scott, Santaella, Cleary and the city of Scottsdale into two depositions of 4 hours and 3 hours

12 **13. Proposed Specific Dates.**

13 **a. Deadline for Fact Discovery.**

14 **DEFENDANTS' POSITION:**

15 The Court should not set deadlines unless and until the Court determines if any claims survive.

16 **PLAINTIFF'S POSITION:**

17 A deadline for fact discovery should be **March 31, 2024**. [this makes no sense]

18 **b. Expert Disclosures.**

19 **DEFENDANTS' POSITION:**

20 Due to the significant burdens and expense imposed created by the retention of experts,
21 Defendants propose that the Court toll the establishment of a deadline for expert disclosures
22 until the Court has determined that any claims remain in this matter.

23 **PLAINTIFF'S POSITION:**

1 A deadline for plaintiff's expert disclosure should be **Jan. 15, 2024**. Defendants deadline
2 for responsive expert disclosure should be due **Feb 21, 2024**. Plaintiff's rebuttal expert
3 disclosure should be due **March 30, 2024**.

4 **Expert Deposition Deadline.**

5 **DEFENDANTS' POSITION:**

6 Due to the significant burdens and expense imposed created by the retention of experts,
7 Defendants propose that the Court toll the establishment of a deadline for expert depositions
8 until the Court has determined that any claims remain in this matter.

9 **PLAINTIFF'S POSITION:**

10 Deposition of any expert should be concluded by **March 31, 2024**.

11 c. **Dispositive Motion Deadline.**

12 **DEFENDANTS' POSITION:**

13 . Should any claims survive against any individual Defendant, then the Court should
14 consider a motion directed at the issue of qualified immunity "at the earliest possible stage" of
15 the litigation. Indeed, the Supreme Court has "repeatedly ... stressed the importance of
16 resolving immunity questions at the earliest possible stage in litigation." *Dunn v. Castro*, 621
17 F.3d 1196, 1199 (9th Cir. 2010) (alteration in original) (quoting *Hunter v. Bryant*, 502 U.S.
18 224, 227, 112 S.Ct. 534, 116 L.Ed.2d 589 (1991)). That is because qualified immunity gives
19 government officials "a right, not merely to avoid standing trial, but also to avoid the burdens
20 of such pretrial matters as discovery." *Id.* (internal quotation marks omitted) (quoting *Behrens*
21 *v. Pelletier*, 516 U.S. 299, 308, 116 S.Ct. 834, 133 L.Ed.2d 773 (1996)). The Court should
22 then set a separate deadline for any additional dispositive motions for thirty (30) days after the
23 discovery deadline.

24 **PLAINTIFF'S POSITION:**

1 A deadline for dispositive motions, should be **May 15, 2024**, unless motions to compel are
2 pending and unresolved.

3 **Deadline for Face-to-Face Good Faith Settlement Talks.**

4 **DEFENDANTS' POSITION**

5 Defendants propose that the Court toll the establishment of a deadline for settlement
6 discussions until after the Court has ruled on qualified immunity motions.

7 **PLAINTIFF'S POSITION:**

8 A settlement deadline should be thirty days before the date set for trial.

9 14. **Whether a Jury Trial has Been Requested.** Plaintiffs requested a jury trial.

10 15. **Estimated Length of Trial.** Defendants do not believe any trial length can be
11 estimated given Plaintiffs' refusal to comply with the Court's Order (Doc. 35). Plaintiff asserts
12 that trial will require ten (10) court days.

13 16. **Prospects for Settlement.** The defendants do not believe that plaintiffs are
14 realistically evaluating the merits of their claims, the risk of loss, or any other matter that
15 would inform the prospects for a rational or reasonable settlement. A perfect illustration of this
16 fact is "Plaintiff's position" set forth below.

17 **PLAINTIFF'S POSITION:**

18 Plaintiff has made an offer to resolve all litigation against the City and these defendants
19 for **\$700,000**, plus the extinguishment of the judgments the City holds only against Mark
20 Stuart's sole and separate property. Plaintiff has at least \$1 million in provable damages for
21 this case and case 2-17-cv-01848-djh-jzb. Defendants are not realistic about their prospects of
22 successfully defending this case. Punitive damages against Lane and Washburn, to support the
23 public interest in free speech and the prevention of unlawful official conduct, will almost
24 certainly exceed \$1 million. Like *Sundquist v. Bank of America, N.A.*, 580 B.R. 536 (Bankr.
25 E.D. Cal. 2018), the punitive damages would go to public interest organizations like the ACLU
26

1 and the Institute for Justice to help combat and stop future civil rights violations by wealthy
2 corporate defendants.

3 RESPECTFULLY SUBMITTED this 11th day of September, 2023.

4 DICKINSON WRIGHT, PLLC

5 By: /s/ Scot L. Claus
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11 By: /s/ Mark Stuart /s/ Virginia Stuart
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13 Mark Stuart
14 Virginia Stuart
Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on November 16, 2022, I electronically transmitted the attached
3 document to the Clerk of the Court using the CM/ECF system, and which will be sent
4 electronically to all registered participants as identified on the Notice of Electronic Filing, and
5 paper copies will be sent to those indicated as non-registered participants.

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7 By: /s/ Sheila Rath
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